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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/632,545 | 08/01/2003 | Michael F. Brletich | 12539 | 2681 |

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EXAMINER

GARCIA, ERNESTO

ART UNIT PAPER NUMBER

3679

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/632,545 | Applicant(s) BRLETICH ET AL. | |
| | Examiner Ernesto Garcia | Art Unit 3679 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) 21-23 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15 and 16 is/are allowed.
- 6) ☒ Claim(s) 1 and 3-9 is/are rejected.
- 7) ☒ Claim(s) 2 and 10-14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election

This application contains claims directed to the following patentably distinct species of the claimed invention:

- I. Figures 2-8 II. Figures 9-11 III. Figure 12

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 21 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims

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are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Newly submitted claims 21-23 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

The original claims were directed to species I as indicated above.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for

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prosecution on the merits. Accordingly, claims 21-23 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "a flat surface edge along the peripheral edge" recited in claim 2 lacks proper antecedent basis in the specification.

Claim Objections

Claim 1 is objected to because of the following informalities:

regarding claim 1, "open ends" in line 7 should be --open end-- since the one plug only seals one end of the bar and not both ends, the comma in line 10 should be deleted, and "it" in line 10 should be defined. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Antonucci et al., 6,119,306.

Regarding claim 1, Antonucci et al. disclose, in Fig. 35, a device comprising a fastener plug **13** including a plug portion **20'** and a fastener portion **24**. The plug portion **20'** defines an end cap **20'** and at least one disc **28** spaced apart from the end cap **20'**. The fastener portion **24** defines an extension member **27** extending outwardly from the end cap **20'**. The extension member **27** includes a projecting member **26'**. Applicant is reminded that the disc is sized and shaped to mate with and seal open ends of a bar. Furthermore, the flexible extension member is able to flex as the member is installed in the open ends of the bar and snap back to an original position when the projection member engages an aperture in a sidewall of the bar.

Regarding claims 2-10, the end cap **20'** defines a peripheral edge **B1** and a flat surface edge **B2** along the peripheral edge **B1**. Note, the claims are written with a broad breadth that Antonucci et al. reads on these claims. Applicant should consider rephrasing that the peripheral edge has a truncated edge or truncated surface.

Regarding claims 3 and 11, a rib **A1** connects the disc **28** to the end cap **20'** (see marked-up attachment).

Regarding claims 4 and 12, the disc **28** is a plurality of discs **28** spaced apart from the end cap **20'**.

Regarding claims 5 and 13, the extension member **27** extends upwardly from the end cap **20'**.

Regarding claims 6 and 14, the extension member **27** extends across the discs **28**.

Regarding claim 7, the discs **28** define a flat surface edge **A2** (see marked-up attachment; Figure 40).

Regarding claim 8, the projection member **26'** defines an inclined surface **A2** (see Figure 41).

Regarding claim 9, Antonucci et al. disclose, in Fig. 35, a device comprising a fastener plug **13** including an end cap **20'** and at least one disc **28** spaced apart and connected to the end cap **20'**. The fastener plug **13** includes a flexible extension member **27** extending outwardly from the end cap **20'** across the disc **28** and spaced apart from the disc **28**. The extension member **27** has a fixed end **A11** connected to the

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end cap 20' and a free end A12 opposite the fixed end A11. The fixed end A11 includes an aperture engaging member 26'.

Response to Arguments

Applicant's arguments with respect to claims 1 and 3-9 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

Claims 15 and 16 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

regarding claim 15, the prior art of record does not disclose or suggest a device comprising an extension member extending across a flat surface edge of a plurality of discs; and,

regarding claim 16, the prior art of record does not disclose or suggest a device comprising an aperture engaging member defining opposing columns joined together by a rib.

Conclusion

Applicant's amendment necessitated the new ground of rejection presented in this Office action. In particular, the addition of new limitations "a flexible extension member" in line 7 of claim 1 and in line 6 of claim 9, and "and spaced apart from the disc" in line 7 of claim 9 necessitated the new ground. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 703-308-8606. The examiner can normally be reached from 9:30-6:00. The fax phone numbers

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for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 703-308-2686. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



E.G.

March 30, 2005

Attachment : one marked-up page of Antonucci et al., 6,119,306.

DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

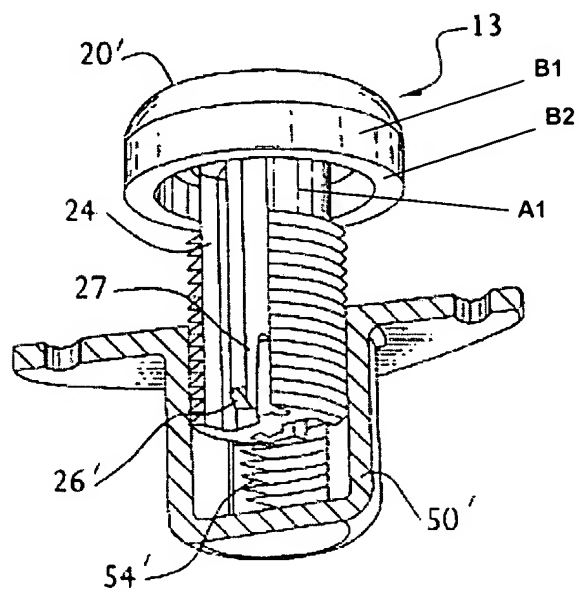


FIG. 35

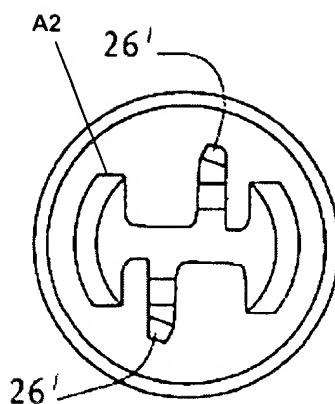


FIG. 40